IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 18372 of 2007(K)

PETITIONER

K.S.LOOKOSE,KADUNKAL HOUSE,
KARUNAGAPALLY,KOLLAM DISTRICT.
(SENIOR GRADE ASSISTANT K.S.E.B.(RETD))

BY ADV. SMT.P.K.RADHIKA

RESPONDENTS
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1. K.S.E.B.REP.BY ITS SECRETARY,
VAIDHYUTHI BHAVANAM,PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER, K.S.E.B., REP BY ITS
SECRETARY,VAIDHYUTHI BHAVANAM,PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.S.ANIL, SC, KSEB
SRI. ASOK M.CHERIYAN, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.18372/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: ORDER NO.425/92(ACB VI) 4020/90) DATED 12.3.1992 OF THE FIRST RESPONDENT.

EXT.P2: ORDER NO.755/97(EXT I/885/97) DATED 3.4.1997 OF THE FIRST RESPONDENT.

EXT.P3: ORDER NO.479/02 EXT 1/885/97 DATED 9.4.2002 OF THE FIRST RESPONDENT.

EXT.P4: LETTER NO.(EXT.1/4080/2006) DATED 16.10.2006 OF THE FIRST RESPONDENT.

EXT.P5: REPRESENTATION DATED 26.10.2006 OF THE Petitioners ADDRESSED TO THE SECOND RESPONDENT.

EXT.P6: REPRESENTATION DATED 23.3.2007 OF THE PETITIONERS ADDRESSED TO THE SECOND RESPONDENT.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 18372 OF 2007
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Dated this the 13th day of August, 2007

J U D G M E N T

While working as a Senior Assistant in the first respondent Board, petitioner availed of leave without allowances for five years for taking up employment abroad and Ext.P1 is the order sanctioning the same. It is stated that on expiry of the period, the leave was extended on two occasions by Exhibits P2 and P3. According to the petitioner, the Board issued Ext.P4 order dated 16/10/06 directing the 2nd respondent to allow the petitioner to rejoin duty w.e.f. 13/10/06, when the third spell of leave sanctioned as per Ext.P3 expired. Petitioner complains that although he reported in the office of the respondents as directed in Ext.P4, he was not given any posting order. He waited till 26/10/06, reporting at the office of the respondents on each day. As posting orders were not forthcoming and in view of the illness of the petitioner, he could not carry on as such any more. Therefore, the petitioner proceeded on leave from 26/10/2006

and continued to be on leave till he attained the age of superannuation on 30/11/06. The complaint of the petitioner is that as he was not admitted to duty pursuant to Ext.P4, he should be paid salary for the period he was kept out, along with all other benefits. It is also stated that the terminal benefits have not been released so far.

2. Respondents have filed a counter affidavit in which it is stated that the petitioner was on leave without allowances for employment abroad for more than 14 years and on the expiry thereof, reported for duty on 13/10/06. It is stated that as he failed to resume duty on 13/10/06, by virtue of the provisions contained in GO(P) No.780/833/Fin dated 16/12/1983, he automatically stood discharged from service. It is stated that although he had reported for duty in pursuance to Ext.P4, in order to admit him for duty he had to submit a contract termination order of his foreign employer and the original passport to show the particulars of Visa and transfer of residence of the petitioner for ensuring that he was relieved of his foreign service. According to the respondents, these documents were

necessary to ascertain that he was not serving anybody other than the Board at the same time. It is stated that as the petitioner's service automatically stood terminated on 13/10/2006, petitioner is not entitled to the terminal benefits such as pension etc.,

3. I am not able to appreciate the stand of the Board in this matter. In my view, the Board's contention is contradictory as well. Ext.P4 order of the first respondent requiring the 2nd respondent to admit the petitioner to duty is dated 16/10/06. If that be so, by no stretch of imagination can it be said that by virtue of the provisions contained in GO(P) No.780/83/Fin dated 16/12/1983, the petitioner's service stood terminated w.e.f. 13/10/06. The 2nd respondent was obliged to honour Ext.P4 and therefore it is too unreasonable a stand that it has taken in the petitioner's case.

4. It is stated in para 5 of the counter affidavit that the petitioner had reported for duty and that he could not be admitted to duty for want of certain documents, such as passport etc. If the petitioner had actually reported for duty on

13/10/2006 as stated in the affidavit, the respondent could not have contended that for not reporting for duty, petitioner's services stood terminated on 13/10/06 itself. Even otherwise, when an employee returns from abroad and that too armed with an order in the nature of Ext.P4, it was unnecessary and unreasonable to insist on documentary evidence for the alleged reason that it was necessary to ensure that he was not serving yet another employer. This aspect must have been proved to the satisfaction of the first respondent before issuing Ext.P4. From the facts as disclosed, the only inference that is possible is that the 2nd respondent was finding out ways and means, to keep the petitioner away and such a stand cannot be appreciated at all.

5. Net result of all these was that according to the respondents petitioner's services stood terminated on 13/10/06 and as a result thereof he has been deprived of all the terminal benefits. Since the termination of the petitioner is totally an arbitrary action of the 2nd respondent, it is declared that the same is illegal and that petitioner is entitled to terminal benefits. However,for the reason that petitioner did not infact work from

13/10/06 onwards, I am not inclined to direct the first respondent to pay him wages for the period upto 30/11/06 when he reached the age of superannuation.

6. The respondent shall ensure that all admissible benefits that are due to the petitioner on his superannuation on 30/11/06 are paid at the earliest, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp